

**REMARKS**

Applicants have amended claim 26 to incorporate the elements of claim 27 and therefore cancelled claim 27. Applicants have also amended claim 35 into an independent form. No new matter has been added by this amendment.

Claims 30 and 36 were previously cancelled.

Claims 1-25 and 37-49 were withdrawn as a result of a prior restriction requirement.

Claims 26, 28, 29, 31-35 and 49 are now pending in the application.

**Allowable Subject Matter**

Applicants acknowledge the Examiner's allowance of Claim 33 if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Claims Rejections – 35 USC § 102**

(A) Claims 26-29, 31, 32, 34 and 49 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,591,578 to McNealy et al. (“McNealy”).

These rejections are respectfully traversed in view of the amendment to claim 26.

Of the claims rejected, claim 26 is independent, with the remaining claims dependent thereon.

Amended Claim 26 now recites, among other things:

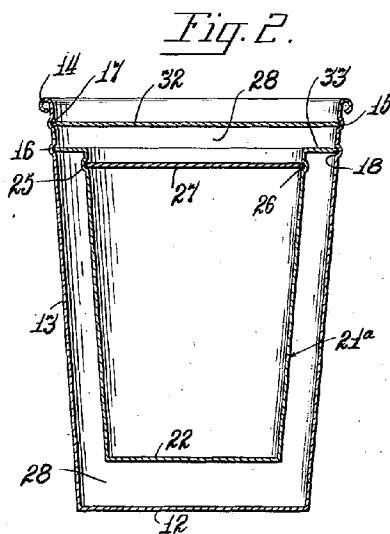
*the outer diameter of said inner tube being substantially similar to the inner diameter of said outer tube.....*

*inserting the inner tube within the open top of the outer tube to a position in which the outwardly flared portion of the inner tube engages a top edge of the recess of the inner surface of the outer tube retaining the inner tube within the outer tube, such that air trapped between the inner tube and the outer tube passes through the recess and vents to atmospheric pressure.*

Applicants submit that McNealy fails to disclose at least the claimed features of:

- a) the outer diameter of said inner tube being substantially similar to the inner diameter of said outer tube, and
- b) an outwardly flared portion of the inner tube engaging a top edge of the recess of the inner surface of the outer tube retaining the inner tube within the outer tube, such that air trapped between the inner tube and the outer tube passes through the recess and vents to atmospheric pressure.

McNealy discloses an insulated container a double-walled container of paper material is provided which includes means for sealing the contents within an interior container and sealing the sealed interior container within an exterior container in such manner as to provide dead air space or spaces entirely around the interior container. (See Fig. 2, Col. 3 lines 36 to 45 and lines 53 to 59, shown below).



It should be quite evident at this time that the interior container is completely surrounded by dead air space which affords thermo means to prevent rapid temperature change in the contents thereof. If desired, all or some of the 40 spaces 28 between the container walls may be filled with ice to thereby increase the thermal effectiveness of the container for maintaining the contents of the interior container at a desired low temperature.

Fig. 2 illustrates a slightly modified form of thermo-container wherein the interior container 21a is provided on its upper edge with an external peripheral lip or flange 33 of such outside dimension as to dispose its peripheral edge for engagement and snug seating in the internal recess 18 of the external container 13. This construction affords a structure whereby an air space or spaces 28 is provided entirely around the interior container and the number of parts required in the assembly is reduced to a minimum.

Thus, McNealy fails to disclose the outer diameter of said inner tube being substantially similar to the inner diameter of said outer tube.

The Examiner proposes that it is inherent that any air trapped between the inner and outer tube (air space 28) of McNealy will pass through the recess (18) and vent to atmospheric pressure.

Applicants respectfully submit that McNealy is completely silent in regard to any venting of air from air gap 28 between the interior container (21a) and external container (13) to the atmosphere.

In contrast, it appears that the container of McNealy, in order to function, is designed to “trap” air in dead air space 28 in order to act as an insulator.

Thus McNealy does not anticipate claim 26.

For these reasons applicant submits that claim 26, and dependent claims 28, 29, 31, 32 and 49, are not anticipated by the McNealy reference.

In addition, the invention defined by amended claim 26, is neither taught nor rendered obvious by McNealy. McNealy has no suggestion that the outer diameter of the inner tube is substantially similar to the inner diameter of the outer tube and inserting an inner tube within the open top of the outer tube to a position in which the outwardly flared portion of the inner tube engages a top edge of the recess of the inner surface of the outer tube retaining the inner tube within the outer tube, such that air trapped between the inner tube and the outer tube passes through the recess and vents to atmospheric pressure.

McNealy teaches an insulated container a double-walled container which requires an interior container to be suspended within an exterior container in such manner as to provide dead air space 28 or spaces entirely around the interior container.

Therefore, having the outer diameter of the inner tube being substantially similar to the inner diameter of the outer tube would preclude or minimize an air space being present entirely around the interior container and the venting or removal of air from air space 28 would appear to teach away from McNealy as these features would significantly degrade or destroy the thermal insulation properties of the McNealy container.

Accordingly, it is submitted that the method as defined by claims 26, 28, 29, 31, 32 and 49 are not taught or suggested by McNealy.

### **Claim Rejection – 35 USC § 103**

**(B)** Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over McNealy.

This rejection is respectfully traversed.

The rejected claim 35 is now independent.

Amended Claim 35 now recites:

*A method of assembling a container comprising an inner tube contained within an outer tube, the method comprising:*

*providing an outer tube having a closed bottom, an open top and a side wall extending therebetween, said side wall defining an inner surface and an outer surface, said inner surface having a recess below the open top thereof;*

*providing an inner tube within the outer tube, said inner tube having a closed bottom, an open top and a side wall having an inner surface and an outer surface extending therebetween, the side wall of the inner tube being shorter than the side wall of the outer tube and including an outwardly flared portion; and*

*inserting the inner tube within the open top of the outer tube to a position in which the outwardly flared portion of the inner tube engages a top edge of the recess of the inner surface of the outer tube retaining the inner tube within the outer tube,*

*wherein the outer surface of the closed bottom of the inner tube is in contact with the inner surface of the closed bottom of the outer tube when the outwardly flared portion of the inner tube extends below the top edge of the recess of the inner surface of the outer tube, thereby causing the inner tube to be biased toward the open end of the outer tube.*

McNealy fails to teach or suggest the claimed feature of the outer surface of the closed bottom of the inner tube is in contact with the inner surface of the closed bottom of the outer tube when the outwardly flared portion of the inner tube extends below the top edge of the recess of the inner surface of the outer tube.

The Examiner proposes that it would have been an obvious matter of design choice to have the closed bottom of the inner tube of McNealy be in contact with the inner surface of the closed bottom of the outer tube when the flared portion extends below the top edge of the recess of the inner surface of the outer tube since such a modification would have involved a mere change in size of component.

Applicants respectfully submit that having the closed bottom of the inner tube in contact with the inner surface of the closed bottom of the outer tube would teach away from McNealy.

McNealy teaches an insulated container a double-walled container which requires an interior container to be suspended within an exterior container in such manner as to provide dead air space or spaces entirely around the interior container.

Thus, having the closed bottom of the inner tube in contact with the inner surface of the closed bottom of the outer tube would preclude an air space being present entirely around the interior container and therefore significantly degrade or destroy the insulation properties of the McNealy container.

Therefore, McNealy does not render amended claim 35 obvious. Accordingly claim 35 is patentable over the cited reference.

**Conclusion**

In view of the amendment and remarks herein, applicants submit the claims are patentably distinct over the prior art and allowable in form.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 02-1666.

If the Examiner has any questions or comments relating to the present application, he or she is respectfully invited to contact Applicant's agent at the telephone number set forth below.

Respectfully submitted,

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